

TAM:DBS:mel:2000V00753

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	
Plaintiff	:	Civil No. 1:CV-00-1449
	:	(Caldwell, J.)
v.	:	(Smyser, M.J.)
	:	
KATHLEEN HAWKES, et al., ,	:	Electronically Filed
Defendants	:	

**BRIEF IN SUPPORT OF DEFENDANT'S**  
**MOTION FOR LEAVE TO FILE ANSWER NUNC PRO TUNC**

Plaintiff M. Ash-Sharief Al'Askari is a former inmate once incarcerated at FCI Allenwood. He filed this Bivens action against Kathleen Hawkes, Director of the Bureau of Prisons (BOP), Correctional Counselor Viola Hursh, Attorney-Advisor Douglas S. Goldring (identified as Robert S. Goldring in the complaint), and Discipline Hearing Officer (DHO) Robert Zimany. Al'Askari alleged that Hursh and Zimany violated his right to due process in charging him with, and finding him guilty of, misconducts, and that Goldring violated his constitutional right of access to the courts. A motion to dismiss and for summary judgment was granted by the Court on April 21, 2001, for failure to exhaust administrative remedies. An appeal to the Third Circuit Court of Appeals followed.

In an unreported opinion issued on January 13, 2003, the Third Circuit affirmed the District Court's order to the extent it dismissed the complaint against Hawk-Sawyer, Zimany and Hursh. The Court's order was vacated to the extent it granted the defendants' motion and dismissed the complaint against defendant Goldring on the access to the courts claim and remanded the matter for further proceedings. On March 6, 2003, a certified copy of the judgment was issued in lieu of a formal mandate.

On April 11, 2003, the case was remanded to the Magistrate Judge for further proceedings on the access to courts claim. A case management order was issued on April 29, 2003, setting forth the deadlines for discovery, discovery-related motions, dispositive motions, and consent.

On or about June 12, 2003, due to the departure of AUSA Matthew E. Haggerty from the United States Attorney's Office late last year, this case was reassigned to the undersigned. Upon review of the District Court and appellate files, it was determined that a dispositive motion had been filed in response to the complaint in lieu of an answer. Thus, an answer had never been filed in this Court. However, once the Third Circuit vacated and remanded the matter, an answer should have been filed within ten days from the Third Circuit's mandate. This was not done. Thus, in order to correct the record, defendant Goldring

seeks leave of Court to file his answer nunc pro tunc. Defendant submits that Al'Askari will not be prejudiced by this action.

Wherefore, for the reasons stated above, defendant requests that his motion for leave to file his answer nunc pro tunc be granted.

Respectfully submitted,

THOMAS A. MARINO  
United States Attorney

s/ D. Brian Simpson  
D. BRIAN SIMPSON  
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Dated: June 19, 2003

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on June 19, 2003, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

M. Ash-Sharief Al'Askari  
5737 N. 12<sup>th</sup> Street  
Philadelphia, PA 19141

s/ Michele E. Lincalis  
MICHELE E. LINCALIS  
Paralegal Specialist